Special Committee to Appoint a Conflict of Interest Commissioner and a Merit Commissioner

LEGISLATIVE ASSEMBLY
PROVINCE OF BRITISH COLUMBIA

FEBRUARY 2013

February 2013

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Conflict of Interest Commissioner and a Merit Commissioner containing our unanimous recommendations.

Respectfully submitted on behalf of the Committee,

Colin Hansen, MLA
Chair

Leonard Krog, MLA
Deputy Chair

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Composition of the Committee

Members

Colin Hansen, MLA	Chair	Vancouver-Quilchena
Leonard Krog, MLA	Deputy Chair	Nanaimo
Ron Cantelon, MLA		Parksville-Qualicum
Mable Elmore, MLA		Vancouver-Kensington
Joan McIntyre, MLA		West Vancouver-Sea to Sky

Clerk to the Committee

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Terms of Reference

On May 16, 2012, the Legislative Assembly agreed that a Special Committee be appointed to unanimously recommend to the Legislative Assembly the appointment of:

1. a Conflict of Interest Commissioner pursuant to section 14 of the *Members' Conflict of Interest Act* (RSBC 1996, c. 287); and

2. a Merit Commissioner pursuant to section 5.01 of the *Public Service Act* (RSBC 1996, c. 385);

and that the said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;

b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;

c) to adjourn from place to place as may be convenient; and

d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible upon either matter referred, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

The said Special Committee is to be composed of Colin Hansen (Convener), Ron Cantelon, Joan McIntyre, Mable Elmore and Leonard Krog.

Introduction

Conflict of Interest Commissioner

The Conflict of Interest Commissioner is a non-partisan officer of the Legislative Assembly of British Columbia, with the responsibility of ensuring that MLAs fulfil their obligations under the *Members' Conflict of Interest Act* (RSBC 1996, c. 287). The Commissioner's mandate includes: reviewing Members' confidential disclosure statements and providing advice respecting their financial interests; conducting and reporting on investigations and formal inquiries, when required; and reporting annually on activities undertaken to the Legislative Assembly, through the Speaker.

Section 14(2) of the *Members' Conflict of Interest Act* describes the procedure for the appointment of a Conflict of Interest Commissioner. It stipulates that, "On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner."

This procedure was used, on May 23, 1991, to appoint the province's first Conflict of Interest Commissioner, Hon. E.N. (Ted) Hughes, QC.

In 1996, the Legislative Assembly assigned the search for a new Commissioner to an all-party parliamentary committee, which was instructed to report back with a unanimous recommendation. On July 30, 1997, the committee presented its report to the House recommending the appointment of Hon. H.A.D. Oliver, QC, and the motion confirming his appointment was carried unanimously by the Legislative Assembly. H.A.D. Oliver was reappointed for a second five-year term in 2002.

In 2007, an all-party Special Committee conducted the search process for the province's third Conflict of Interest Commissioner, Paul Fraser, QC, whose first five-year appointment expired in December 2012.

Merit Commissioner

The Merit Commissioner is an independent officer of the Legislature appointed under section 5.01 of the *Public Service Act* (RSBC 1996, c. 385), who is responsible for monitoring the application of the merit principle to public service appointments. The Merit Commissioner conducts random audits to ensure that public service appointment processes are merit-based and that individuals appointed are properly qualified for the positions to which they were appointed.

Since 2006, an all-party Special Committee of the Legislative Assembly has been charged with the task of recruiting a Merit Commissioner whose appointment is ratified by the House. Joy Illington was the province's first Merit Commissioner to be appointed using this method, and she served a three-year term from 2006 to 2009 before retiring. An all-party Special Committee conducted the search for her successor, Fiona Spencer, whose three-year renewable term expires in February 2013.

Meetings Schedule

On May 16, 2012, the all-party Special Committee to Appoint a Conflict of Interest Commissioner and a Merit Commissioner received its terms of reference from the Legislative Assembly.

In addition to informal discussions to plan the selection process, the Committee met on the following dates for the purposes described below:

Thursday, September 6, 2012	Election of Chair and Deputy Chair Review of terms of reference
Wednesday, September 12, 2012	Interviews with incumbents Deliberations Adoption of report

Selection Process

On September 6, 2012, the Special Committee to Appoint a Conflict of Interest Commissioner and a Merit Commissioner held its organizational meeting and reviewed its terms of reference and related briefing materials. After due consideration, the Committee decided to invite the incumbents, Mr. Paul Fraser, QC and Ms. Fiona Spencer, to submit an application and to participate in an interview.

Both interviews took place in Vancouver on September 12, 2012 and confirmed committee members' preliminary assessment of the incumbents' qualifications and suitability for a second term. The Special Committee was impressed by Mr. Fraser's continuing commitment to his statutory responsibilities which he has performed diligently during his first term as Conflict of Interest Commissioner. His sound judgement and advice have greatly assisted Members in fulfilling their legislative duties. With respect to Ms. Spencer's appointment, the Special Committee recognized and particularly appreciated the knowledgeable and professional manner in which she has undertaken her duties. Her continued dedication to the principle of merit is essential for this unique role.

Recommendations

Conflict of Interest Commissioner

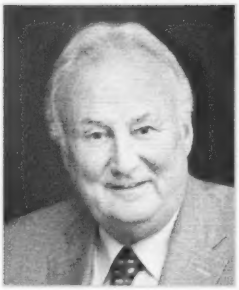
The Special Committee unanimously recommends to the Legislative Assembly that **Paul Fraser, QC** be reappointed Conflict of Interest Commissioner for British Columbia, pursuant to section 14 of the *Members' Conflict of Interest Act*.

Merit Commissioner

The Special Committee unanimously recommends to the Legislative Assembly that **Fiona Spencer** be reappointed Merit Commissioner for the Province of British Columbia, pursuant to section 5.01 of the *Public Service Act*.

Biographical Information

Paul D. K. Fraser, Q.C., Conflict of Interest Commissioner



Paul D. K. Fraser, Q.C. has been the Province's Conflict of Interest Commissioner since January 1, 2008.

Prior to his appointment he practiced law in Vancouver for many years as Litigation Counsel in both civil and criminal matters. He was appointed Queen's Counsel in 1982. He is a former part-time member of the BC Law Reform Commission, and was selected to be a fellow of the American College of Trial Lawyers in 1991. He is currently a trustee of the Canadian Foundation for Legal Research; a member of the Advisory Board of the Canada-United States Law Institute; and Chair of the Tsawwassen First Nation Judicial Council.

During his private and public career he has served as National President of the Canadian Bar Association, President of the Commonwealth Lawyers Association, and President of the Canadian Section of the International Commission of Jurists. He has also chaired two Federal Commissions and was Special Counsel to the Minister of Foreign Affairs with respect to Canada/United States Treaty matters. He has also served as a board member of the CBC and VIA Rail Inc.

He is a graduate of the University of Manitoba and the Law School at the University of British Columbia. He has received a Honourary Doctor of Laws from the University of Winnipeg.

Fiona Spencer, Merit Commissioner

Since her appointment as Merit Commissioner in February 2010, Fiona Spencer has provided oversight and insight into appointment practices in the BC public service. She has led work to identify those areas of merit-based hiring which are at risk and has ensured through sustained effort that the principle of merit is given primary consideration. Special studies of a number of hiring programs have resulted in systemic changes which ensure fairness and equity is respected.

Prior to her appointment as Merit Commissioner, Fiona had a successful career in the federal public service, retiring in 2007 at the Assistant Deputy Minister level. During that time, she held executive positions in the human resources (HR) field in a number of federal departments and agencies and served in the Privy Council Office where her responsibilities included providing advice and guidance to the Clerk and Prime Minister on public service-wide HR issues. Fiona also has significant experience negotiating collective agreements and dealing with union/management issues.

Fiona Spencer has received a number of awards and honours including the Queen's Golden Jubilee Medal for exemplary service, the Head of the Public Service Award for Valuing and Supporting People, the Ottawa Citizen Vision Award for HR Professional of the Year; and the Hicks Morley Vision Award for Strategic Goals Champion.

Appendix A: *Members' Conflict of Interest Act* [RSBC 1996] Chapter 287

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DEFINITIONS

1 In this Act:

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,

(b) affects a member as one of a broad class of electors, or

(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member in a marriage-like relationship, but does not include a person who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

CONFLICT OF INTEREST

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

CONFLICT OF INTEREST PROHIBITION

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

INSIDER INFORMATION

4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

INFLUENCE

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

ACTIVITIES ON BEHALF OF CONSTITUENTS

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

ACCEPTING EXTRA BENEFITS

7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

FORMER MEMBERS OF EXECUTIVE COUNCIL AND FORMER PARLIAMENTARY SECRETARIES

8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

CARRYING ON BUSINESS

9 (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

PROCEDURE ON CONFLICT OF INTEREST

10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

PERFORMANCE OF RESPONSIBILITIES BY MINISTER

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

VOIDABILITY OF TRANSACTION OR PROCEDURE

12 The failure of any member to comply with section 10 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

APPLICATION FOR RESTITUTION

13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

COMMISSIONER

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) [Repealed 1999-44-85.]

ANNUAL REPORT

15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

DISCLOSURE STATEMENT

16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) Subject to subsection (2.1), the disclosure statement must contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 2 (1) to (4) of the *Business Corporations Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

(a) advise the member of the fact, in writing, and

(b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), ***"material change"*** means a material change as defined in the regulations.

PUBLIC DISCLOSURE STATEMENT

17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).

(3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

COMMISSIONER'S OPINIONS AND RECOMMENDATIONS

18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*.

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

COMMISSIONER'S OPINION ON REFERRED QUESTION

19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

(3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

SPECIAL ASSIGNMENTS

20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

INQUIRY

21 (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) For the purposes of preparing an opinion under section 19 or conducting a special assignment under section 20, the commissioner may order a person to do either or both of the following:

(a) attend, in person or by electronic means, before the commissioner to give evidence on oath or affirmation or in any other manner;

(b) produce for the commissioner a record or thing in the person's possession or control.

(2.1) An order under subsection (2) must be in the form of a summons, served on the person by personal delivery or registered mail to the person's last known address.

(3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.

(6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

POWER TO ENFORCE SUMMONS AND PUNISH FOR CONTEMPT

21.1 (1) The commissioner may make an order finding a person to be in contempt, and may impose a fine on or commit the person for contempt, if the person has been served with a summons under section 21 and fails or refuses to do any of the following:

(a) attend before the commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

(2) The commissioner may call on the assistance of any peace officer to enforce an order made under this section, and, if called on, the peace officer may take any action that is necessary to enforce the order and may use such force as is reasonably required for that purpose.

PENALTIES

22 (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5 000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

PROTECTION OF COMMISSIONER

23 No action of any kind lies against the commissioner for anything he or she does under this Act.

APPROPRIATION

24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

OFFENCE ACT

25 Section 5 of the *Offence Act* does not apply to this Act.

POWER TO MAKE REGULATIONS

26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

Appendix B: *Public Service Act* [RSBC 1996] Chapter 385

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Part 1 — Introductory Provisions

Definitions

1 In this Act:

"agency" means the BC Public Service Agency continued under section 5 (1);

"agency head" means the head of the agency appointed under section 5 (2);

"auxiliary employee" means an auxiliary employee as defined in the regulations;

"deputy minister" means

(a) a person appointed as a deputy minister under section 12, or

(b) subject to section 14, a person who by an Act or by an order in council under that section is declared to have the status of a deputy minister;

"employee" means a person appointed under this Act other than a person appointed under section 15;

"merit commissioner" means the merit commissioner appointed under section 5.01.

Purposes of Act

2 The purposes of this Act are to

(a) facilitate the provision of service to the public in a manner that is responsive to changing public requirements,

(b) recruit and develop a well qualified and efficient public service that is representative of the diversity of the people of British Columbia,

(c) encourage the training and development of employees to foster career development and advancement,

(d) encourage creativity and initiative among employees, and

(e) promote harmonious relations of the government and employees and bargaining agents that represent employees in the public service.

Application of Act

3 Except as otherwise provided in this Act or in another Act, this Act applies

(a) to all ministries of the government, and

(b) to any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares this Act, or a provision of this Act, to apply.

Consultation process

4 (1) In this section, **"consult"** means seeking advice or an exchange of views or concerns prior to the making of a decision respecting the matters that determine merit under section 8 (2) or the making of regulations under section 25.

(2) The agency must consult with representatives of the employees' bargaining agents certified under the *Public Service Labour Relations Act* with respect to

(a) the application of the matters that determine merit under section 8 (2), and

(b) regulations that may affect the employees represented by the bargaining agents that the minister intends to recommend to the Lieutenant Governor in Council under section 25.

(3) In addition, the agency may consult with employees who are not represented by the bargaining agents referred to in subsection (2) with respect to the matters referred to in that subsection that affect members of those groups.

PART 2 — AGENCY HEAD AND MERIT COMMISSIONER

BC Public Service Agency

5 (1) The division of the government known as the Public Service Employee Relations Commission is continued as the BC Public Service Agency under the administration of the minister.

(2) The Lieutenant Governor in Council must appoint, under section 12, an individual to be the agency head.

(2.1) to (2.5) [Repealed 2005-35-36.]

(3) The agency head is responsible for personnel management in the public service including but not limited to the following:

(a) advising the minister respecting personnel policies, standards, regulations and procedures;

(b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;

(c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;

(d) developing, providing, assisting in or coordinating staff training, educational and career development programs;

(e) developing, establishing and maintaining job evaluation and classification plans;

(f) acting as bargaining agent for the government in accordance with section 3 of *the Public Service Labour Relations Act;*

(g) developing, establishing and maintaining occupational health and safety programs;

(h) developing and implementing employment equity policies and programs;

(i) conducting studies and investigations respecting staff utilization;

(j) carrying out research on compensation and working conditions;

(k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;

(l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with this Act and the regulations;

(m) establishing and maintaining a personnel management information system;

(n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.

(4) Subject to this Act and the regulations and on the recommendation of the agency head, the minister may issue policies respecting the matters referred to in subsection (3).

Appointment of merit commissioner

5.01 (1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint an individual to hold office as the merit commissioner under this Act.

(2) The merit commissioner is an officer of the Legislature and must

(a) faithfully, honestly and impartially exercise the powers and perform the duties of the office, and

(b) not divulge any information received under this Act, except if permitted by this Act.

(3) The Legislative Assembly must not recommend an individual to be appointed under subsection (1) unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.

(4) The merit commissioner is to be appointed for a term of 3 years and may be reappointed in the manner provided in this section for further 3 year terms.

(5) The merit commissioner is entitled

(a) to be paid, out of the consolidated revenue fund, compensation as may be fixed by the Lieutenant Governor in Council, and

(b) to be reimbursed for reasonable travelling and out of pocket expenses personally incurred in performing the duties of the office.

(6) The Lieutenant Governor in Council may appoint an acting commissioner if

(a) the office of commissioner is or becomes vacant when the Legislative Assembly is not sitting,

(b) the commissioner is suspended when the Legislative Assembly is not sitting,

(c) the commissioner is removed or suspended or the office becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under subsection (1) before the end of the session, or

(d) the commissioner is temporarily absent because of illness or for another reason.

(7) An acting commissioner holds office until

(a) a person is appointed under subsection (1),

(b) the suspension of the commissioner ends,

(c) the Legislative Assembly has sat for 30 days after the date of the acting commissioner's appointment, or

(d) the commissioner returns to office after a temporary absence,

whichever is the case and whichever occurs first.

Merit commissioner

5.1 (1) The merit commissioner is responsible for monitoring the application of the merit principle under this Act by

(a) conducting random audits of appointments to and from within the public service to assess whether

(i) the recruitment and selection processes were properly applied to result in appointments based on merit, and

(ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed, and

(b) reporting the audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made.

(2) In carrying out his or her responsibilities as merit commissioner under this section he or she must not conduct audits or issue reports in respect of the period before June 5, 2001.

(3) [Repealed 2005-35-38.]

Annual report of merit commissioner

5.2 (1) The merit commissioner must report annually, no later than May 31, to the Legislative Assembly concerning the merit commissioner's activities under this Act since the last report was made under this section.

(2) The Speaker must lay each annual report before the Legislative Assembly as soon as practicable, if it is in session.

(3) If the Legislative Assembly is not in session on the date of the annual report, or within 10 days after that date, the annual report must be promptly filed with the Clerk of the Legislative Assembly.

(4) The report of the merit commissioner under this section must not disclose

(a) personal information, as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*, relating to individuals who applied for or were appointed to positions in the public service, or

(b) the identity of persons who participated on behalf of the ministries, boards, commissions, agencies or organizations, as the case may be, in the selection of the individuals appointed to positions in the public service.

Expenses of merit commissioner

5.3 The merit commissioner may make a special report to the Legislative Assembly if the merit commissioner believes that the amounts and establishment provided for the office of merit commissioner in the estimates are inadequate for fulfilling the duties of the office.

Delegation

6 Subject to the regulations, the agency head may

(a) delegate any of his or her powers, duties or functions under this Act to an employee of the agency,

(b) with respect to employees of a ministry or a board, commission, agency or organization to which this Act applies, delegate any of his or her powers, duties or functions under this Act to

(i) a deputy minister or other employee of the ministry, or

(ii) a member, officer or employee of the board, commission, agency or organization,

(c) delegate dismissal authority under section 22 (2)

(i) to an assistant deputy minister or an employee who has an equivalent classification level to an assistant deputy minister, and

(ii) to a member or officer of a board, commission, agency or organization to which this Act applies,

(d) establish conditions, standards or requirements for any delegation, and

(e) amend, replace or revoke any delegation made under this section.

Access to facilities and records

7 For the purposes of carrying out their duties under this Act, the agency head and merit commissioner are entitled to access to

(a) ministries,

(b) boards, commissions, agencies and organizations that are declared to be subject to this section under section 3, and

(c) records, of ministries or of those boards, commissions, agencies and organizations, containing information pertinent to those duties or to personnel matters.

PART 3 — APPOINTMENTS TO THE PUBLIC SERVICE

Appointments on merit

8 (1) Subject to section 10, appointments to and from within the public service must

(a) be based on the principle of merit, and

(b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.

(2) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service.

(3) Regulations, policies and procedures with respect to recruitment, selection and promotion must facilitate

(a) opportunities for external recruitment and internal advancement to develop a public service that is representative of the diversity of the people of British Columbia, and

(b) the long term career development and advancement of employees appointed under this Act.

(4) Subject to the regulations, the agency head may direct in respect of a vacancy or class of vacancies in the public service, that applicants be

(a) limited or given preference in a manner intended to achieve employment equity objectives,

(b) limited to employees to encourage career development and advancement,

(c) limited to employees of a stated occupational group, position level or organizational unit, or

(d) limited to a stated geographical area or locale.

Probation

9 (1) If a person who is not an employee is appointed to a position in the public service, the person is on probation until he or she has worked the equivalent of 6 months' full time employment.

(2) If the appointment is made from within the public service, a probation period in the new position not exceeding the equivalent of 6 months' full time employment may be imposed.

(3) A deputy minister or the agency head may reject an employee during the probation period if the deputy minister or agency head considers that the employee is unsuitable for employment in the position to which he or she was appointed.

Exceptions to section 8

10 Subject to the regulations

(a) section 8 (1) does not apply to an appointment that is a lateral transfer or a demotion, and

(b) section 8 (1) (b) does not apply to the following:

(i) a temporary appointment of not more than 7 months in duration;

(ii) an appointment of an auxiliary employee;

(iii) a direct appointment by the agency head in unusual or exceptional circumstances.

Repealed

11 [Repealed 2003-88-10.]

Deputy ministers

12 (1) The Lieutenant Governor in Council may appoint deputy ministers, associate deputy ministers and assistant deputy ministers.

(2) An associate deputy minister has all the powers of a deputy minister.

(3) Sections 5.1, 8 and 18 do not apply to appointments under this section.

Deputy ministers' pensions

13 (1) Subject to subsection (2), when calculating the amount of a pension under the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act*, each year of service as a deputy minister must be counted as 1 1/2 years of pensionable service.

(2) Subsection (1) does not apply

(a) to a person appointed as a deputy minister on or after September 1, 2001, or

(b) to a person holding the position of acting deputy minister.

(2.1) Despite subsection (2) (a), subsection (1) continues to apply to a person who is a deputy minister before September 1, 2001 and is reappointed as a deputy minister on or after that date as long as there is no break in service as a deputy minister.

(3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

Declaration of deputy minister status

14 The Lieutenant Governor in Council may declare that a person has the status of a deputy minister and may set terms and conditions of employment, including remuneration, for that person and specify which sections of this Act or the regulations apply to that person.

Appointment by Lieutenant Governor in Council

15 (1) The Lieutenant Governor in Council may appoint persons the Lieutenant Governor in Council considers

(a) will be acting in a confidential capacity to the Lieutenant Governor, Executive Council or a member of the Executive Council, or

(b) will be appointed to a position that requires special professional, technical or administrative qualifications.

(2) A person referred to in subsection (1) (a) or (b) may be appointed by the Lieutenant Governor in Council on terms and conditions, including remuneration, authorized by the Lieutenant Governor in Council or set out in the regulations.

(3) This Act, other than subsections (1) and (2) and sections 21 and 25 (3), does not apply to a person appointed under this section.

PART 4 — REVIEW OF STAFFING DECISIONS

Definitions

16 In this Part, ***"deputy minister"*** means,

(a) with respect to a position in a ministry, the deputy minister of that ministry, and

(b) with respect to a position with a board, commission, agency or organization, the person having overall responsibility for the board, commission, agency or organization.

Request for feedback on staffing decision

17 (1) An employee who is an unsuccessful applicant for an appointment to the public service may, within the prescribed time, request from the individual responsible for the appointment an explanation of the reasons why he or she was not appointed.

(2) The responsible individual must provide an explanation as soon as practicable after receiving a request under subsection (1).

Inquiry into staffing decision

18 (1) An employee who has made a request under section 17 may request an inquiry into the application of section 8 (1) with respect to the appointment.

(2) A request under subsection (1) must be made within the prescribed period to the deputy minister responsible for the position and must include a detailed statement specifying the grounds on which the request is made.

(3) The deputy minister who receives an application under subsection (1), or a person designated by the deputy minister, must inquire into the appointment and confirm the appointment or proposed appointment or direct that the appointment or proposed appointment be reconsidered.

Review by merit commissioner

19 (1) An employee who is an unsuccessful applicant for an appointment to a position in a bargaining unit under the *Public Service Labour Relations Act* who has made a request under section 18 and disagrees with the decision of the deputy minister or designate under that section may request a review of the appointment by the merit commissioner on the ground that section 8 (1) has not been complied with.

(2) A request under subsection (1) must be made in writing within the prescribed period to the merit commissioner and may only be based upon the grounds submitted to the deputy minister under section 18 (2).

(3) Subject to the regulations, the merit commissioner must establish the procedure for the expeditious consideration of requests for reviews under subsection (1).

(4) If an applicant requests a review under subsection (1), the merit commissioner must, before undertaking the review, inform the deputy minister of the review.

(5) The merit commissioner may summarily dismiss a request for a review under subsection (1) if

(a) the request for review is not made within the time limit prescribed under subsection (2),

(b) the merit commissioner considers that the request for review is frivolous, vexatious or trivial or is not made in good faith,

(c) the request for review does not contain sufficient information to determine whether section 8 (1) has been complied with, or

(d) the grounds, even if proven, are not sufficient to establish that section 8 (1) has not been complied with.

(6) After conducting a review, the merit commissioner may

(a) dismiss the review, or

(b) direct that the appointment or the proposed appointment be reconsidered.

(7) This section does not apply with respect to an appointment to the public service that is referred to in section 10.

Power to compel persons to answer questions and order disclosure

20 (1) For the purposes of a review under section 19, the merit commissioner may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the merit commissioner to answer questions on oath or affirmation, or in any other manner;

(b) produce for the merit commissioner a record or thing in the person's possession or control.

(2) The merit commissioner may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Contempt proceeding for uncooperative person

20.01 The failure or refusal of a person subject to an order under section 20 to do any of the following makes the person, on application to the Supreme Court by the merit commissioner, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

(a) attend before the merit commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

Immunity protection

20.02 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the merit commissioner, or a person acting on behalf of or under the direction of the merit commissioner, because of anything done or omitted

(a) in the performance or intended performance of any duty under section 19, or

(b) in the exercise or intended exercise of any power under sections 19 to 20.01.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Decision final

20.1 A decision of the merit commissioner under section 19 is final and binding.

PART 5 — MISCELLANEOUS

Oaths

21 A person appointed to the public service and a person appointed under section 15 must swear or affirm an oath in the prescribed form.

Dismissal and suspension of employees

22 (1) The agency head, a deputy minister or an employee authorized by a deputy minister may suspend an employee for just cause from the performance of his or her duties.

(2) The agency head, a deputy minister or an individual delegated authority under section 6 (c) may dismiss an employee for just cause.

Repealed

23 [Repealed 2007-21-6.]

Annual report

24 The minister must lay before the Legislative Assembly as soon as practicable, a report for the fiscal year ending March 31 respecting the work of the agency.

Power to make regulations

25 (1) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations respecting government personnel management, including regulations respecting the following:

(a) the definition of "auxiliary employee" in section 1;

(b) recruitment, selection and appointment of staff including standards and procedures respecting advertising vacancies and who may apply for those vacancies;

(c) probation periods for employees who are appointed to positions in the public service;

(d) health and safety of employees;

(e) terms and conditions of employment;

(f) job evaluation and classification;

(g) standards of employee conduct;

(h) all matters respecting discipline, suspension and dismissal of employees;

(i) monitoring and auditing of all personnel functions.

(2) Regulations under subsection (1)

(a) may be different for different categories of employees, and

(b) may be made retroactive to a date not earlier than the date this section comes into force, and if made retroactive are deemed to have come into force on that date.

(3) The Lieutenant Governor in Council may make regulations respecting the terms and conditions of employment of persons appointed under section 15.

(4) The Lieutenant Governor in Council may make regulations respecting inquiries and reviews under Part 4 including regulations respecting the manner of applying for an inquiry under section 18 or a review under section 19 and the time limits for those applications.

(5) [Repealed 2003-88-12.]

Transitional — deputy ministers' pensions

26 (1) Despite section 13, section 4.1 of the *Public Service Act*, S.B.C. 1985, c. 15, continues to apply with respect to a person who became a deputy minister before November 5, 1991 and to whom the section would otherwise have applied.

(2) For greater certainty, a deputy minister appointed on or after September 1, 2001 has no claim for payment of compensation because he or she is ineligible for the benefit provided under section 13 (1).